

No. 24931

**CANADA
and
PORTUGAL**

**Agreement with respect to social security. Signed at Toronto
on 15 December 1980**

Authentic texts: English, French and Portuguese.

Registered by Canada on 16 July 1987.

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et
PORTUGAL**

**Accord en matière de sécurité sociale. Signé à Toronto le
15 décembre 1980**

Textes authentiques : anglais, français et portugais.

Enregistré par le Canada le 16 juillet 1987.

AGREEMENT¹ BETWEEN CANADA AND PORTUGAL WITH RESPECT TO SOCIAL SECURITY

The Government of Canada and the Government of Portugal,
Desirous of co-operating with each other in the social field,
Have decided to conclude an Agreement on Social Security and, for this purpose,
Have agreed as follows:

PART I. GENERAL PROVISIONS

Article I. For the purpose of this Agreement, unless the context otherwise requires:

(a) “Competent authority” means, in relation to Portugal, the Minister or Ministers responsible for the implementation of the legislation described in sub-paragraph 1 (a) of Article II, and in relation to Canada, the Minister or Ministers responsible for the application of the legislation mentioned in sub-paragraph 1 (b) of Article II;

(b) “Territory” means, in relation to Portugal, the territory of the Republic of Portugal and, in relation to Canada, the territory of Canada;

(c) “Legislation” means the legislation described in Article II;

(d) “Competent institution” means, in relation to Portugal, the institution to which the person is affiliated at the time of application for benefits or from which he is entitled to receive benefits or would be entitled to receive benefits, if he resided in the territory of Portugal, and, in relation to Canada, the competent authorities;

(e) “Worker” means, in relation to Portugal, a salaried worker according to the legislation of Portugal and, in relation to Canada, a person who is employed in pensionable employment under the Canada Pension Plan;

(f) “Credited period” means a period of contributions, employment or residence used to acquire a right to a benefit under the legislation of either Party. This term also designates in relation to Portugal, any equivalent period under the legislation of Portugal and, in relation to Canada, any equivalent period during which a disability pension is payable under the Canada Pension Plan;

(g) “Government employment” includes, in relation to Canada, employment as a member of the Royal Canadian Mounted Police or the Armed Forces of Canada, employment of any person by the Government of Canada, the government or a municipal corporation of any province, and includes any employment as may be so designated, from time to time, by Canada;

(h) “Official administrative service”, in relation to Portugal, means the central, regional and local administrations and such public institutes as have the nature of personalized services or of public funds;

¹ Came into force on 1 May 1981, i.e., the first day of the second month following the exchange of the instruments of ratification, in accordance with article XXV (1).

(i) “Death insurance” includes, in relation to Portugal, a death benefit and survivor’s benefits;

(j) “Pension”, “allowance” or “benefit” includes any supplements or increases applicable to them;

(k) “Old age benefit” means, in relation to Portugal, an old age pension under the legislation of Portugal and, in relation to Canada, an old age pension under the Old Age Security Act (excluding any income-tested supplement, spouse’s allowance and the retirement pension under the Canada Pension Plan);

(l) “Spouse’s Allowance” means, in relation to Canada, the benefit payable to the spouse of a pensioner and includes the pension equivalent and the guaranteed income supplement equivalent under the Old Age Security Act;

(m) “Survivor’s benefit” means, in relation to Portugal, the pensions payable under the legislation of Portugal on the death of an insured person or pensioner to those persons who, according to that legislation, are the survivors of that person or pensioner and, in relation to Canada, a survivor’s pension payable to the surviving spouse under the Canada Pension Plan;

(n) “Invalidity benefit” means, in relation to Portugal, an invalidity pension payable under the legislation of Portugal and, in relation to Canada, a disability pension payable under the Canada Pension Plan;

(o) “Children’s benefit” means an orphan’s benefit or a disabled contributor’s child’s benefit payable under the Canada Pension Plan;

(p) “Death benefit” means, in relation to Portugal, the death allowance, a one-time payment under the death insurance program, and, in relation to Canada, the death benefit payable in a lump sum under the Canada Pension Plan;

(q) Any term that is not defined in this Article has the meaning assigned to it in the applicable legislation.

Article II. 1. The legislation to which this Agreement applies is:

(a) In relation to Portugal:

(i) The legislation respecting the general scheme for social security of salaried workers concerning disability, old age and death insurance;

(ii) The legislation relating to special schemes for certain categories of workers, to the extent that the legislation relates to the risks covered by the legislation referred to in sub-paragraph (i);

(iii) The legislation concerning the social pension.

(b) In relation to Canada:

(i) The Old Age Security Act;

(ii) The Canada Pension Plan.

2. This Agreement applies or shall apply to all Acts or Regulations which have amended or extended or shall amend or extend the legislation listed in paragraph 1.

3. This Agreement shall apply only to Acts or Regulations which extend the existing plans to other categories of beneficiaries if no objection on the part of either Party has been communicated to the other Party within three months of notification of such Acts, in accordance with article XVIII.

4. Provincial social security legislation may be dealt with in arrangements as specified in Article XXIV.

Article III. 1. This Agreement applies to persons who are, or have been, subject to the legislation referred to in Article II, and to their dependants and survivors, as specified by the legislation of either Party.

2. Subject to this Agreement, persons described in the preceding paragraph, regardless of their nationality, are subject to the legislation of one Party and are eligible for benefits under the same conditions as the citizens of that Party.

3. The provisions of this Agreement are not applicable to diplomatic agents and career consular officers, including chancellery officials who are not permanent residents or citizens of the receiving State.

Article IV. Subject to the provisions of Articles XII, XIII, XIV and XV of this Agreement, the pensions, benefits, annuities and death allowances acquired under the legislation of one of the Contracting Parties shall not be subject to any reduction, modification, suspension, cancellation or confiscation by reason only of the fact that the beneficiary resides in the territory of the other Party, and they shall be payable in the territory of the other Party.

Article V. Any pension, benefit, annuity or death benefit payable under this Agreement by one Party in the territory of the other is also payable in the territory of a third State.

PART II. PROVISIONS DETERMINING THE LEGISLATION APPLICABLE

Article VI. 1. Subject to the provisions of Articles VII, VIII and IX, a worker shall be subject only to the legislation of the Party in the territory of which he is employed.

2. Subject to the provisions of Articles VII, VIII and IX, when a worker is employed by the same employer in the territories of both Parties during the same period, he shall be subject only to the legislation of the Party in the territory of which he ordinarily resides.

Article VII. 1. Where, after the entry into force of this Agreement, a worker other than a worker referred to in Article VIII, who is subject to the legislation of a Party and employed by an employer having his place of business in the territory of that Party, is assigned by that employer to work in the territory of the other Party, the legislation of the first Party shall continue to apply to him in respect of that work relationship for a period of up to 24 months.

2. (a) Where, before the entry into force of this Agreement, a worker other than a worker referred to in Article VIII, who had been subject to the legislation of one Party and employed by an employer having his place of business in the territory of that Party, was assigned by that employer to work in the territory of the other Party, he may, within six months from the entry into force of this Agreement, decide whether the legislation of the first or the second Party is to be applied to him in respect of that work relationship; and if he chooses to be covered under the legislation of the first Party, then the legislation of that Party shall apply to him for a period of up to 24 months. If he chooses to be covered under the legislation of the second Party, then the legislation of that Party shall apply to him. In either case his choice shall take effect from the day on which he gives notice thereof to the appropriate competent authority.

(b) If the worker in question does not make a choice pursuant to sub-paragraph (a) by the end of the six-month period provided for by that sub-paragraph:

- (i) The legislation being applied to him at the entry into force of this Agreement shall continue to apply to him. If this legislation is that of the first Party mentioned in sub-paragraph (a) it shall apply for a period of up to 24 months from the entry into force of this Agreement;
- (ii) If the legislation of neither Party, or of both Parties, was being applied to him, the legislation of the second Party mentioned in sub-paragraph (a) shall be applied.

3. The prior consent of the competent authorities of both Parties, or of the authorities whom they have delegated for that purpose, is required for any extension of the application of the legislation of the first Party mentioned in paragraph 1 or 2, when the assignment extends beyond 24 months.

Article VIII. 1. Where a person employed in an official administrative service in respect of Portugal is sent in the course of his employment to the territory of Canada, the legislation of Canada shall not apply to him and he shall remain subject to the legislation of Portugal.

2. Where a person who is subject to the legislation of Canada and employed in Government employment in respect of Canada is sent in the course of his employment to the territory of Portugal, the legislation of Portugal shall not apply to him and the legislation of Canada shall apply to him as if he were employed in its territory.

3. Subject to the provisions of paragraph 4, a person who is locally engaged by a Party to work in an official administrative service or Government employment in the territory of the other Party shall be subject to the legislation of the latter Party.

4. A citizen of a Party who is locally engaged by that Party, whether before or after the date of entry into force of this Agreement, in an official administrative service or government employment in the territory of the other Party may decide, in respect of that work, that the legislation of the first Party shall apply to him.

Written notice of his decision shall be given to the competent authority of the first Party within 6 months after the date of entry into force of this Agreement or within 6 months of the first day of work, whichever is the later, and the decision shall take effect from the date on which the notice is given.

Article IX. 1. Subject to the provisions of paragraphs 2 and 3, a citizen of a Party who is employed as a member of the crew of a ship or aircraft of the other Party shall, in respect of that employment, be subject only to the legislation of the latter Party.

2. Any person ordinarily resident in the territory of one Party and employed as a member of the crew of a ship and paid remuneration by an employer having a place of business in the territory of that Party shall, with respect to that employment, be subject only to the legislation of that Party.

3. For the purposes of paragraph 1 of this Article,

- (i) Notwithstanding Article II, the legislation of Canada shall mean only the Canada Pension Plan;

(ii) The term “ship of a Party” means a ship the crew of which is employed by an employer whose principal place of business is situated in the territory of that Party.

Article X. 1. Subject to paragraph 2, where, under the terms of this Part, a person other than a person referred to in Article IX is subject to the legislation of Canada, including the comprehensive pension plan of a province, during any period of residence in the territory of Portugal, that period of residence shall, in respect of that person, his spouse and dependants who reside with him and do not occupy employment during that period, be treated as a period of residence in Canada for the purposes of the Old Age Security Act.

2. Any period during which a spouse or a dependent person referred to in paragraph 1 is subject, by reason of employment, to the legislation of Portugal, shall not be treated as a period of residence in Canada for the purposes of the Old Age Security Act.

3. Subject to paragraphs 4 and 5, where, under the terms of this Part, a person other than a person referred to in Article IX is subject to the legislation of Portugal during any period of residence in the territory of Canada, that period in respect of that person, his spouse and dependants who reside with him and are not employed during that period shall not be treated as residence in Canada for the purposes of the Old Age Security Act.

4. Periods during which the spouse or dependant referred to in paragraph 3 is contributing to the Canada Pension Plan or to the comprehensive pension plan of a province of Canada as a result of employment shall be treated as periods of residence in Canada for the purposes of the Old Age Security Act.

5. If a person referred to in paragraph 3 also becomes subject to the Canada Pension Plan or a comprehensive pension plan of a province of Canada, by virtue of occupying simultaneously more than one employment, such period of employment shall not be treated as a period of residence for the purposes of the Old Age Security Act.

Article XI. Notwithstanding Articles VI, VII, VIII and IX, the competent authorities may make such arrangements as they may deem necessary in the interest of particular persons or categories of persons, according to the spirit and fundamental principles of this Agreement.

PART III. PROVISIONS CONCERNING BENEFITS

CHAPTER I. OLD AGE BENEFIT

Article XII. 1. (a) If a person is entitled to an old age benefit under the legislation of Portugal, without recourse to the following provisions of this Article, the benefit payable under the legislation of Portugal shall be payable in the territory of Canada.

(b) If a person is entitled to an old age benefit under the Old Age Security Act of Canada, without recourse to the following provisions of this Article, this benefit shall be payable in the territory of Portugal if that person has accumulated, in all, under that Act at least twenty years of residence in Canada.

(c) If a person is entitled to an old age benefit under the rules set out in subsections 3 (1) (a) and (b) of the Old Age Security Act, without recourse to the following provisions of this Article, but has not accumulated twenty years of

residence in Canada, a partial benefit shall be payable to him in the territory of Portugal if the periods of residence in the territory of the two Parties when totalized according to the rules set out in paragraph 4 of this Article, represent at least twenty years. The amount of old age benefit payable in the territory of Portugal shall, in this case, be calculated in accordance with the principles governing the payment of the partial pension payable, according to paragraphs 3 (1.1) to 3 (1.4) inclusive of the Old Age Security Act and the details of application of the paragraphs of that Act to this Agreement shall be defined by the administrative arrangement provided for in Article XVII.

(d) If a person is entitled to a partial pension according to the rules in paragraph 3 (1.1) to 3 (1.4) inclusive of the Old Age Security Act, without recourse to the following provisions of this Article, the partial pension shall be payable in the territory of Portugal if the periods of residence in the territory of the two Parties when totalized according to the rules set out in paragraph 4 of this Article equal at least twenty years.

2. Notwithstanding any other provision of this Agreement, the applicable legislation of Canada and Portugal for the purposes of the other paragraphs of this Article, is, respectively, the legislation of Portugal with respect to the general and special schemes of social security and the Canadian Old Age Security Act, with the exception of paragraph 3 (1) of that Act.

3. If a person is not entitled to an old age benefit on the basis of the periods credited under the legislation of one of the Parties, entitlement to that benefit shall be determined by totalizing these periods and those stipulated in the following paragraph of this Article, provided that these periods do not overlap.

4. (a) For purposes of establishing entitlement to an old age benefit payable by Canada under paragraph 5 of this Article, residence in the territory of Portugal after the age specified and determined in the administrative arrangements with respect to the legislation of Canada shall be counted as residence in the territory of Canada.

(b) For purposes of establishing entitlement to an old age benefit payable by Portugal under paragraph 5 of this Article:

- (i) A month ending on or before December 31, 1965 which would be recognized as a month of residence under the Old Age Security Act shall be treated as a month of contributions under the legislation of Portugal;
- (ii) A year in which a contribution has been made to the Canada Pension Plan and commencing on or after January 1, 1966 shall be accepted as twelve months of contributions under the legislation of Portugal;
- (iii) A month commencing on or after January 1, 1966 which would be a month of residence for the purposes of the Old Age Security Act and in relation to which no contribution has been made under the Canada Pension Plan shall be accepted as a month of contributions under the legislation of Portugal.

5. If a person does not satisfy the conditions required for entitlement to old age benefits except through totalizing of periods as covered in paragraph 3, the competent institution of the Party or Parties in question shall calculate the amount of the pension in conformity with the provisions of the legislation administered by it, directly and exclusively on the basis of the periods accomplished under such legislation.

6. Notwithstanding any other provision of this Agreement, where the total of credited periods is not equal to at least ten years, Canada will not be liable to pay any old age benefit under this Article, and when this period is not equal to at least twenty years, Canada will not be liable to pay any old age benefit by virtue of this Article, in the territory of Portugal.

7. If the sum of the benefits to be paid by the competent institutions of both Parties does not attain the minimum established by the legislation of Portugal, the individual resident in Portugal shall be entitled to a supplement equal to the difference and this shall be paid by the competent authority of Portugal.

CHAPTER 2. SPOUSE'S ALLOWANCE

Article XIII. 1. The legislation of Canada applicable in respect of the Spouse's Allowance under this Article shall, notwithstanding any other provision of this Agreement, be the Old Age Security Act excepting subsection 17.1 (1) of that Act.

2. If a person is not entitled to the Spouse's Allowance because he has not satisfied the residence requirements under the legislation of Canada, then, provided that he has resided in the territories of the Parties in aggregate, for at least ten years, after the age specified and determined within the administrative arrangements, in accordance with the Old Age Security Act, Canada shall pay to that person an amount of Spouse's Allowance, calculated in conformity with the legislation of Canada.

3. The Spouse's Allowance is payable only in the territory of Canada.

CHAPTER 3. SURVIVOR'S BENEFIT, INVALIDITY BENEFIT, CHILDREN'S BENEFIT AND DEATH BENEFIT

Article XIV. 1. The provisions of this Article shall apply to survivor's benefit, invalidity benefit, children's benefit and death benefit to the extent that the nature of the benefit may require.

2. If a person is entitled to a benefit on the basis of the periods credited under the legislation of one Party without recourse to the provisions of the succeeding paragraphs of this Article, the benefit shall be payable in the territory of the other Party.

3. If a person is not credited solely on the basis of the periods credited under the legislation of one of the Parties, entitlement to the benefit shall be determined by totalizing the credited periods in accordance with the provisions of the succeeding paragraphs of this Article. For the purposes of survivor's benefits, children's benefits and death benefits only, any reference in this Article to a credited period shall be construed as applying to the person by virtue of whose contributions a benefit is being claimed.

4. (a) For the purposes of establishing entitlement to a benefit payable by Canada under paragraph 5 of this Article, a year in respect of which contributions were made under the legislation of Portugal for at least 3 months shall be accepted as a year for which contribution have been made under the Canada Pension Plan.

(b) The provisions of Article XII 4 (b) (i), (ii) and (iii) shall apply for the purpose of establishing entitlement to any benefit payable by Portugal under paragraph 5 of this Article.

5. (a) The provisions of Article XII 5 and 7 shall apply to this Article except, in relation to Canada, for calculation of the amount of the flat rate benefit payable under the Canada Pension Plan.

(b) The amount of the flat rate benefit under the Canada Pension Plan is the amount obtained by multiplying:

(i) The amount of the flat rate benefit determined under the provisions of the Canada Pension Plan

by

(ii) The ratio that the periods of contributions to the Canada Pension Plan represent in relation to the total of the periods of contributions to the Canada Pension Plan and of only those periods credited under the legislation of Portugal required to satisfy the minimum requirements for entitlement under the Canada Pension Plan.

6. Any period of contribution under the legislation of Portugal prior to the date upon which the contributor reached the age of 18 may be taken into consideration for determining an applicant's entitlement to a survivor's, orphan's, death or invalidity benefit under the legislation of Canada. However, no survivor's, orphan's or death benefit may be paid unless the deceased's contributory period under the Canada Pension Plan is at least three years nor may an invalidity benefit be paid unless the disabled person's contributory period under the Canada Pension Plan is at least five years.

7. Any benefit payable by one Party under this Article shall be paid if the beneficiary resides in the territory of the other Party.

CHAPTER 4. GENERAL PROVISIONS

Article XV. 1. In the event of totalization for a benefit under the provisions of Articles XII, XIII and XIV, if the total duration of the periods completed under the legislation of one Party is not one year, the institution or the authority of that Party shall not be required to award benefits in respect of those periods by virtue of this Agreement.

2. These periods shall, however, be taken into consideration by the institution or authority of the other Party for the establishment of entitlement to the benefits of that Party through totalization.

3. For the purpose of this Article "periods completed under the legislation of one Party" means for Canada, in addition to credited periods, any period of residence mentioned in paragraph 4 (a) of Article XII.

CHAPTER 5. VOLUNTARY CONTRIBUTIONS

Article XVI. For the purposes of determining eligibility to make voluntary contributions to its general compulsory insurance scheme for invalidity, old age and death benefits, as well as for survivor's benefits, the competent institution of Portugal shall take into consideration, if necessary, to complement periods of insurance completed under the legislation which it administers, the periods credited under the Canada Pension Plan in conformity with the provisions of subparagraph 4 (b) (ii) of Article XII.

PART IV. MISCELLANEOUS PROVISIONS

Article XVII. 1. A general administrative arrangement, agreed to by the competent authorities of the two Contracting Parties, shall set out as required the conditions under which this Agreement shall be implemented.

2. The liaison agencies of the two Contracting Parties shall be designated in this arrangement.

Article XVIII. 1. The competent authorities and the institutions responsible for the application of this Agreement:

- (a) Shall communicate to each other any information necessary in respect of the application of this Agreement;
- (b) Shall lend their good offices and furnish assistance free of charge to one another with regard to any matter relating to the application of this Agreement;
- (c) Shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation insofar as these changes affect the application of this Agreement.

2. Any information furnished by virtue of paragraph 1 shall be used only for the purposes of applying this Agreement and the legislation to which this Agreement applies and for no other purpose.

Article XIX. 1. Any exemption from, or reduction of charges provided for in the legislation of one Party in connection with the issuing of any certificate or document required to be produced for the application of that legislation, shall be extended to certificates or documents required to be produced for the application of the legislation of the other Party.

2. Any acts or documents of an official nature required to be produced for application of this Agreement shall be exempt from any certification or similar formality.

Article XX. Any claim, notice or appeal which should, for the purposes of the legislation of one of the Parties, have been presented within a prescribed period to a competent authority or institution of that Party responsible for the application of this Agreement, but which is in fact presented within the same period to the corresponding authority or institution of the other Party, shall be treated as if it had been presented to the authority or institution of the former Party. In such cases, the authority or institution of the latter Party shall, as soon as possible, arrange the claim, notice or appeal to be sent to the authority or institution of the former Party.

Article XXI. For application of this Agreement, the competent authorities and institutions of the two Parties may communicate directly with one another in any of the official languages of either Party.

Article XXII. The competent authorities of the two Parties shall resolve, to the extent possible any difficulties which arise in interpreting or applying this Agreement, according to its spirit and fundamental principles.

Article XXIII. 1. In the event of the termination of this Agreement, any right acquired by a person in accordance with its provision shall be maintained

and negotiations shall take place for the settlement of any rights then in course of acquisition by virtue of those provisions.

2. No provision of this Agreement shall confer any right to receive a pension, allowance or benefit for a period before the date of the entry into force of the Agreement.

3. Except where otherwise provided in this Agreement, any credited period established before the date of entry into force of the Agreement shall be taken into account for the purpose of determining the right to benefit under this Agreement.

4. Subject to provisions of paragraphs 1, 2 and 3 of this Article, a pension, allowance or benefit shall be payable under this Agreement in respect of events which happened before the date of entry into force of this Agreement.

Article XXIV. 1. The competent authority of Portugal and the competent authorities of the provinces of Canada may conclude understandings concerning any social security legislation within provincial jurisdiction insofar as those understandings are not inconsistent with the provisions of this Agreement.

2. Where an understanding has been concluded between the competent authority of Portugal and a province providing a comprehensive pension plan, concerning that provincial comprehensive pension plan, Canada may, if it deems necessary, for the purposes of applying this Agreement, conclude an understanding with that province in order to co-ordinate the Canada Pension Plan and that provincial plan and may, among other things, accept periods of contributions to the provincial plan as periods of contributions under the legislation of Canada.

Article XXV. 1. This Agreement shall enter into force, after the conclusion of the general administrative arrangement, on the first day of the second month following the date of exchange of the instruments of ratification.

2. This Agreement shall remain in force without any limitation on its duration. It may be denounced by one of the two Parties giving twelve months' notice in writing to the other.

[For the testimonium and signatures, see p. 238 of this volume.]

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in two copies at Toronto this 15th day of December 1980, in the English, French, Portuguese languages, each version being equally authentic.

EN FOI DE QUOI les soussignés, dûment autorisés à cet effet par leurs Gouvernements respectifs, ont signé le présent Accord.

FAIT en deux exemplaires à Toronto, le 15^e jour de décembre 1980, en français, en anglais et en portugais, chaque version faisant également foi.

For the Government of Canada:
Pour le Gouvernement du Canada :

MONIQUE BÉGIN

For the Government of Portugal:
Pour le Gouvernement du Portugal :

LUIS GOIS FIGUERA
